

.FO 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1357 of 1991

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes.

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

2. To be referred to the Reporter or not? - No.

JJJ

J

3. Whether Their Lordships wish to see the fair copy of the judgement? - No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - No.

5. Whether it is to be circulated to the Civil Judge? - no.

GUJ WATER RESO.DEVE CORP LTD

Versus

MAHENDRASINH UDESINH SOLANKI

Appearance:

M/S TRIVEDI & GUPTA for Petitioners

MR TR MISHRA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

CORAM : THE CHIEF JUSTICE G.D.KAMAT

Date of decision: 08/08/96

ORAL JUDGEMENT

This Revision Application is directed against the order dated 21st September, 1990, whereby the application for condonation of delay in instituting the appeal was dismissed by the Joint District Judge, Kheda at Nadiad. The applicants were the defendants in Regular Civil Suit No.385 of 1987, which was instituted by the first respondent. It appears that for some purported misconduct, first respondent, who is an employee of the first petitioner, was placed under suspension and in view of the initiation of departmental enquiry, he challenged the same in the regular civil suit and obtained interim relief on 15th of February, 1988. Under this interim relief, an order was made, staying the order of suspension and departmental enquiry.

Aggrieved by the interim order, the petitioners instituted Special Civil Application No.2633 of 1988 on 23rd of May, 1988. When the Special Civil Application came up before the learned single Judge of this Court on 28th of July, 1988, it was held that in as much as the petitioners have equally efficacious alternative remedy of preferring an appeal, the said Special Civil Application cannot be entertained. An observation was also made by the learned single Judge that whatever period spent in prosecuting the Special Civil Application shall have to be taken into consideration as having been spent bona fide in a Court, which, ultimately, refused to entertain the said proceedings. Upon this event, the petitioners instituted an appeal before the District Judge, Kheda at Nadiad on 18th of August, 1988 and, at the same time, filed Civil Miscellaneous Application for condonation of delay. However, the learned Joint District Judge, who disposed of the Civil Miscellaneous Application, by the order dated 21st September, 1990, rejected the same with the result, the appeal was held barred by law of limitation. Upon reading the impugned order dated 21st September, 1990 of the Joint District Judge, it is clear that the learned District Judge held that even when the period spent in prosecuting the Special Civil Application before the High Court is excluded, the petitioners have not shown sufficient cause for the remainder period and that is how he rejected the application.

I have gone through the impugned order. In my view, what prevailed upon the learned Joint District Judge cannot be allowed to be sustained. The fact remains that the first respondent challenged the order placing him under suspension and initiation of

departmental proceeding in a suit and obtained an interim relief, stalling both suspension as also departmental enquiry. The further fact remains that the petitioners instituted Special Civil Application before the High Court and by the time the Special Civil Application was disposed of, it was end of July, 1988. The fact remains that a learned Judge of this Court directed the petitioners to institute appeal, on the ground that, that was the proper and efficacious remedy for the petitioners. As a matter of fact, within less than three weeks from the date of the order of the learned single Judge, the appeal was instituted, i.e. to say on 18th of August, 1988. It is, therefore, difficult to accept that negligence of any sort could ever be attributed to the petitioners. The fact remains that the petitioners took effective steps to challenge the order of the trial court dated 15.2.1988 and the fact that they instituted Special Civil Application, followed by an appeal, is a pointer in that direction. It is otherwise well settled that the parties must be allowed to fight their battles on merits rather than on technicalities. Mr.Prabhakar Upadhyay, learned counsel appearing for the first respondent, indeed, said that no sufficient cause has been made out and the learned Joint District Judge has exercised his discretion, which cannot be interfered with. I am unable to accept this submission of the learned counsel for respondent No.1.

The result is that, the Revision Application succeeds. The impugned order made by the Joint District Judge, Kheda, at Nadiad dated 21st September, 1990 in Civil Miscellaneous Application No.84 of 1988 is quashed and set aside and the Civil Miscellaneous Application is allowed. The learned Joint District Judge is directed to hear the appeal of the petitioners, on its merits. In the matter of condonation of delay, the petitioners to pay to respondent No.1 costs of Rs.125/-. Rule is made accordingly made absolute, with no order as to costs in this Revision Application.

(apj)